

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
SOUTHERN DIVISION

2006 OCT 16 P 3:32

J.C. RODGERS,

Plaintiff,

v.

JOHN E. POTTER, Postmaster General,  
and U. S. POSTAL SERVICE,

Defendants,

DEBRA P. HACKETT, CLK  
U.S. DISTRICT COURT  
MIDDLE DISTRICT ALA  
CIVIL ACTION NO. 1:06cv491-WKW

**RESPONSE BY PLAINTIFF TO DEFENDANTS' MOTION  
TO DISMISS OR, IN THE ALTERNATIVE, FOR SUMMARY  
JUDGMENT**

Pursuant to the Judge's order the Plaintiff will address the issues submitted by the Defendant in their Motion to Dismiss.

**I. CLAIMS ARE DUE TO BE DISMISSED FOR HIS PLAINTIFF'S  
FAILURE TO COMPLY WITH CONDITIONS PRECEDENT TO  
FILING HIS COMPLAINT**

The case was sent express mail May 30, 2006, 10:18 am, from Elba, AL 36323 and arrived at pick-up point on May 31, 2006, 9:22 am. The Plaintiff is asking the Judge for a little latitude since in fact the case was mailed before the 90 days elapsed. It should also be noted that at no other time has timeliness been a factor.

**II. FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES**

The Plaintiff has made every effort to seek resolution within the confines of the agency. Every attempt made at resolution has been met with resistance by the agency. The Plaintiff has sought resolution through both informal and formal channels to no avail. The Plaintiff has even solicited the assistance of the Equal Employment Opportunity Commission (Office of Federal Operations)

with negative results. The Plaintiff, while attempting to seek resolution through civil actions, is now for the first time confronted with the issue of timeliness.

**III. THE PLAINTIFF CANNOT STATE A CLAIM OF A HOSTILE WORK ENVIRONMENT**

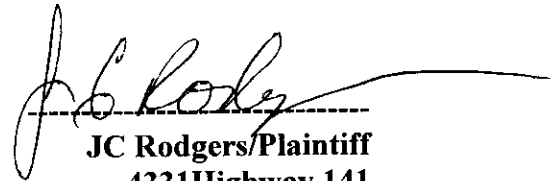
The Defendants states that taking all of the incidents together, the Plaintiff cannot establish a hostile work environment, even though he was the only employee that had to endure the OIC's negative, demeaning, and humiliating comments. The Defendants in this case states that the Plaintiff cannot establish sufficient frequency of conduct. Likewise, he cannot show a sufficient severity of conduct. The Defendants may think of it as a small matter however viewed from the Plaintiff's perspective as a clergyman in a society where African – American Men are often victims of unlawful discrimination, the actions were offensive and a violation of Title VII. Ellison vs. Brady 924 F.d 872 (9<sup>th</sup> Circuit 1991)

Wherefore, for the reasons set forth above, Plaintiff respectfully request that the Court do not dismiss Plaintiff's Complaint and grant a summary judgment in favor of the Plaintiff.

Respectfully submitted this day of October 16, 2006.

**Certificate of Service**

**I certify that the foregoing and enclosures were hand delivered to the Clerk of the Court and by facsimile to the USPS Law Department and to the Assistant United States Attorney.**

  
JC Rodgers/Plaintiff  
4331 Highway 141  
Elba, Alabama 36323  
334.897.5385